IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2121 OF 2004

Shri Gautam Verma, )
Amba Bhavan, 3rd Floor, 7th )
Carter Road, Borivali (E), )
Mumbai-400 066. )..PETITIONER

Versus

Bombay Hospital, New Marine )
Lines, Mumbai-400 020. )..RESPONDENT

Mr. Mihir Desai, for the Petitioner.
Mr. C.U. Singh i/b,. Sanjay Udeshi & Co., for the Respondent.

**CORAM: F.I. REBELLO, J.**
**DATE :** 24th September,2004

JUDGMENT:

1. By the present petition the petitioner impugns the order dated 27th February, 2003 passed by the IInd Labour Court. By that order the petitioner's claim for wages based on the award dated 26th September, 1995 as modified by minutes of order dated 2nd September, 2002 in Writ Petition No.2526 of 2001 has been disposed of. The petitioner in his application before the Labour Court had quantified the amount due to him. The petitioner at the time of termination of his services was working as Assistant Accountant. In his application before the Labour Court he had prayed that back wages be calculated by equating his post to that of Senior Clerk. The contention of the respondent was that there was no post of Assistant Accountant and the post of Assistant Accountant was an isolated post for the petitioner and that there no posts of Assistant Accountant until September, 1997. It was further contended that the petitioner was claiming salary based on settlement entered into between the Union. Admittedly in the settlement entered into with the Union there was no post of Assistant Accountant. Dealing with the rival contentions the

learned Labour Court observed that the petitioner herein does not belong to category of Senior Clerk and as he was never appointed to the post of Senior Clerk and though he is posted by way of adjustment on the post he is not entitled to the benefits of Senior Clerk in the said post. The learned Tribunal further held that the claim by the petitioner in a sum of Rs.9,15,159/- as also interest would be worked out to Rs.14,07,550/- was not supported by any documentary evidence. The contention of the respondent herein was that the petitioner at the highest was entitled to Rs.1,68,276/- based on the minimum wages payable in the absence of any settlement covering the post of the petitioner to which he was holding and to which he was reinstated. Based on this the learned Labour Court was pleased to partly allow the application and directed the payment in a sum of Rs.1,68,276/- to the applicant.

2. At the hearing of this petition on behalf of the petitioner learned Counsel contends that on reinstatement the Petitioner's salary atleast ought to have been calculated based on the salary of a Senior Clerk. It was not open to the respondent to treat the petitioner's case based on minimum wages. The learned Labour Court in not considering that the order of reinstatement and the fact that the petitioner was asked to do the work of Senior Clerk has misdirected himself in law and consequently the impugned order is liable to be set aside.

. On the other hand on behalf of the respondent learned Counsel points out that apart from the findings recorded by the Labour Court there was another proceedings which was initiated by the petitioner herein before the Industrial Court being Complaint (ULP) No.327 of 1997. That complaint was disposed of by order dated 29th August, 2003. The learned Industrial Court by that order in the complaint has directed that the petitioner herein be paid wages for the post of Assistant Accountant Grade C-5 in the pay scale of 490-50-740-60-1040-70-1390-80-1790-90-2240-100-2740 from September, 1997 and to extend to him the other benefits of the settlement of 1997 Exhibit C-29. The petitioner's case for being paid benefits under the earlier settlements was rejected. . The learned Industrial Court found that when the petitioner was reinstated the respondent paid the salary as per the scale given in the appointment letter by considering continuity of service. It was further found that the salary provided under the Minimum Wages Act for the Senior Clerk was more than the said scale. Dealing with the contention that the respondents herein were guilty of unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act the learned Industrial Court found that the petitioner herein had been unable to establish that the respondent had committed unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The learned Industrial Court further found that there was no post of Assistant Accountant in the respondent hospital and the petitioner was the first such person to be appointed. Further

finding recorded was that the said post was not in bargaining category. The learned Industrial Court for all these reasons held that the petitioner was not entitled to the benefit of earlier settlement, but entitled to the benefits under the settlement dated 1st September, 1997 as in that settlement the post of Assistant Accountant had been created.

3. After hearing the learned Counsel the question really is whether the order of the Labour Court suffers from any error apparent on the face of the record. It must firstly be noted that the petitioner was appointed as Assistant Accountant. His services came to be terminated as Assistant Accountant. The order of reinstatement was to the post to which he was posted. In so far as the post of Assistant Accountant is concerned until the settlement of 1st September, 1997 in the earlier settlements there was no wage revision for the post of Assistant Accountant. Once that be the case the question of paying the petitioner in the scale of Senior Clerk would not arise as the order of reinstatement was to reinstate him to the post of Assistant Accountant and not to any other post. Therefore, at the highest the petitioner having been reinstated to the post of Assistant Accountant would be entitled to the salary of that post in terms of the letter of appointment and if there is any subsequent revisionsto those revisions. There were subsequent revision but before 1st September, 1997 the post of Assistant Accountant was not included in the settlement for wage increase. It is only from 1st September, 1997 that new post of Assistant Accountant by promotion was created and new pay scales came to be

sanctioned. Considering the salary offered to the petitioner was found to be less than the minimum wages payable that was also paid. Once that be the case it really cannot be said that the finding recorded by the Labour Court discloses any error of law apparent on the face of the record. Apart from that the intervening circumstances, namely the order dated 29th August, 2003 in complaint No.327 of 1997 wherein also the Industrial Court has taken a view similar to the Labour Court,

which order has not been challenged.

. For all the aforesaid reasons I find no cause for interference. Hence petition rejected.

**(F.I. REBELLO, J.)**